

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 2:04cr221
	)	
ALL STATE ENVIRONMENTAL	)	
DREDGING, INC.,	)	
	)	
Defendant.	)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, Stephen W. Haynie, Assistant United States Attorney, Michael R. Fisher, EPA Assistant Regional Counsel, the defendant, ALL STATE ENVIRONMENTAL DREDGING, INC., and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

**1. Offense and Maximum Penalties**

The defendant agrees to plead guilty to Count Two of the indictment, charging the defendant with illegally discharging dredged materials, in violation of Title 33, United States Code, Sections 1311(a) and 1319(c)(2)(A), the "Clean Water Act." The maximum penalties for this offense are a fine of \$500,000, full restitution, a special assessment, and five years of probation. The parties agree, pursuant to Federal Criminal Rule 11(c)(1)(B), that the defendant shall be sentenced to a period of five years of probation. The parties further agree that the defendant shall be jointly and severally liable for payment of the fine of \$75,000 imposed on co-defendant, Rudy J. Lanier. The parties reserve the right to argue the appropriate the conditions of probation.

**2. Factual Basis for the Plea**

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

**3. Assistance and Advice of Counsel**

The defendant is satisfied that the defendant's attorney has rendered effective assistance.

**4. Role of the Court and the Probation Office**

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, No. 04-104, 2005 WL 50108 (U.S. Jan. 12, 2005), the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. Notwithstanding the foregoing, the parties understand that the recommendations

and requests made in this plea agreement pursuant to Federal Criminal Rule 11(c)(1)(B) are not binding on the Court if the Court accepts this plea agreement.

**5. Waiver of Appeal and Review**

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence that conforms with this plea agreement on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

**6. Special Assessment**

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of four hundred dollars (\$400.00) per count of conviction.

**7. Payment of Monetary Penalties**

The defendant understands and agrees that, pursuant to Title 18, United States Code, Sections 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of its financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant

agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

**8. Immunity from Further Prosecution in this District**

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the indictment or statement of facts.

**9. Dismissal of Other Counts**

As a condition of the execution of this agreement and the Court's acceptance of the defendant's plea of guilty, the United States will move to dismiss the remaining counts of the indictment against the defendant.

**10. Agreement Regarding Conditions of Probation.**

All State Environmental Dredging agrees to the following terms and conditions of probation:

Environmental Compliance Program. Defendant acknowledges that the United States Sentencing Guidelines allows the Court to the defendant to implement an "effective program to detect and prevent violations of law" pursuant to Chapter 8, Section 8A1.2, Application note 3(k) and Section 8D1.4(c)(1). Assuming the defendant remains in operation, defendant will develop and implement the central components of an environmental compliance program which satisfies this requirement prior to sentencing, and will submit its proposal to the Probation Office and the United States at least 30 days prior to sentencing. At a minimum, the program will consist of the following:

- a. The defendant will create an Environmental Compliance Manual. The manual should cover general areas of federal and state environmental regulations, including management of solid and hazardous waste; regulatory agency notifications in case of spills, releases, emissions or discharges of

pollutants into the environment; dealings with regulatory inspectors and personnel, and the importance of accuracy, timeliness and honesty in reporting to regulatory agencies all information required by environmental laws and regulations;

- b. All current employees who are in positions of environmental supervision and management will be required to read defendant's environmental compliance manual by the time of sentencing, and new employees in such positions must read the manual at the time of hiring;
- c. Defendant will assure that there is a system in place which requires its employees to report environmental noncompliance without fear of retribution.  
See USSG §8A1.2, Application Note 3(k)(5);
- d. Defendant will develop and maintain a system for providing training to employees on federal and state environmental regulations; and
- e. Defendant will designate a full-time employee to manage its environmental compliance program. This individual will be responsible for oversight and management of corporate environmental compliance.

Environmental Audits. Defendant will voluntarily hire an independent environmental consultant to perform an environmental audit relating to its first dredging contract following the sentencing. When completed, that audit will be submitted to the United States Probation Office and the Environmental Protection Agency pursuant to this agreement and defendant's environmental compliance program. Thereafter, for each additional dredging contract following the sentencing, defendant will have performed independent environmental audits every 18 months from the date of

sentencing through the term of probation, or as directed by the United States Probation Office. Further, defendant will produce the audit's findings, any proposed corrective actions, and a schedule for corrective action reported to the United States Probation Office and the Environmental Protection Agency. Defendant agrees to the following:

- f. Defendant will notify the United States Probation Office of the identity of the independent environmental consultant. Defendant will supply a copy of the audit contract to the United State Probation Office at least 45 days prior to performance of the audits required herein;
- g. The independent environmental consultant will follow generally accepted environmental auditing techniques, procedures and policies in designing and executing the audits, including the reporting of deficiencies and corrective measures. The audits will cover all federal and state regulated environmental matters at defendant's facilities;
- h. Defendant will notify the United States Probation Office and the Environmental Protection Agency at least 10 days prior to commencement of each annual audit. The United States Probation Office and the Environmental Protection Agency will have the right to accompany the independent consultant during all or any part of the audit;
- i. Defendant will furnish to the United States Probation Office and the Environmental Protection Agency the final report on the independent consultant's environmental findings and recommendations; and

- j. Defendant will submit a written report to the United States Probation Office and the Environmental Protection Agency no later than 45 days after receiving the final report for each audit detailing what action defendant will or has taken to correct any deficiencies and regulatory violations.

#### **11. Nature of the Agreement and Modifications**

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Paul J. McNulty  
United States Attorney

By: \_\_\_\_\_  
Stephen W. Haynie  
Assistant United States Attorney

\_\_\_\_\_  
Michael R. Fisher  
Assistant Regional Counsel  
U.S. Environmental Protection Agency

APPROVED:

\_\_\_\_\_  
Michael R. Smythers  
Supervisory Assistant U.S. Attorney

Date of Approval: February 2, 2005

\_\_\_\_\_  
Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Rudy J. Lanier  
President, All State Environmental Dredging, Inc.  
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Hunter W. Sims, Jr.  
Counsel for the Defendant